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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 RAOUL V. NORMANDIA Jr.,

12 Defendant.

CASE NO. 2:20-cr-00110-RSL-1

**ORDER DENYING MOTION FOR
TEMPORARY RELEASE**

13 Defendant moves for temporary release to be examined by a medical doctor. The
14 government opposes the motion. The Court having considered the pleadings and the record
15 DENIES the motion for temporary release, Dkt. 108.

16 Under 18 U.S.C. § 3142(i), the Court may grant defendant temporary release "to the
17 extent that the judicial officer determines such release to be necessary for preparation of the
18 person's defense or for another compelling reason." Defendant bears the burden to establish
19 grounds for temporary release, *United States v. Terrone*, 454 F.Supp.3d 1009, 1018 (D. Nev.
20 2020), and the relief authorized by § 3142(i) should be used "sparingly." *United States v.*
21 *McKnight*, No. CR18-16 TSZ, 2020 WL 1872412, at *2–3 (W.D. Wash. Apr. 15, 2020) (citing
22 *United States v. Boatwright*, — F. Supp. 3d —, 2020 WL 1639855 at *4 (D. Nev. Apr. 2,
23 2020)).

1 Defendant argues he should be temporarily released because he was diagnosed with
2 COVID-19 in December 2020. He avers when he contracted COVID in December he had a
3 scratchy throat, clogged nose, body aches and fever. He avers he has had two brief examination
4 but has not been seen by medical staff since January despite having occasional chest pain. In
5 support of his motion, he attached medical records he obtained from the Federal Detention
6 Center (FDC). Dkt. 110.

7 Because Defendant requests temporary release based upon his medical condition and care
8 at the FDC, and because Defendant submitted medical records in support, the Court ordered the
9 United States to respond, and specifically directed the United States to indicate whether
10 Defendant has been seen medically since Defendant filed the temporary release motion, and
11 whether Defendant has a medical attention that warrants temporary release. Dkt. 113.

12 On May 13, 2021, the United States filed a response arguing Defendant was medically
13 examined on May 11, 2021 and his medical records show his condition does not merit release, is
14 being adequately assessed, and the FDC has a follow-up plan for further medical care. Dkt. 115.

15 The same day, Defendant filed a reply to the United States arguing Defendant's
16 examination was performed by a "nurse" and that does not "increase our confidence that the
17 medical staff pays sufficient attention to inmate complaints." Dkt. 118. Defendant also argues the
18 Court should not consider the medical records the United States submitted because he did not
19 sign a waiver.

20 The record before the Court does not support temporary release. First, the Court detained
21 Defendant finding him a danger to the community. In August 2020, Defendant was charged by
22 indictment with Count 1 Conspiracy to Distribute Fentanyl; Count 6 Possession of MDMA and
23 Cocaine with the Intent to Distribute; and Count 7, Possession of a Firearm in Furtherance of a

1 Drug Trafficking Offense. On April 20, 2021, Defendant pled guilty as charged in the
2 indictment; Defendant's sentencing is set for July 15, 2021.

3 Second, Defendant's motion revolves around contracting COVID, and displeasure with
4 the medical care he has received. His motion indicates he contracted COVID in December and
5 had initial symptoms such as fever, aches, etc. These symptoms have abated and there is nothing
6 in his motion or supporting records showing these symptoms have continued. He contends he has
7 not been seen medically since January. But he has not presented with any medical emergency,
8 and there is no indication that formally requested medical services. At most he informally asked
9 for services.

10 Third, Defendant was medically examined on May 11, 2021. He was examined by an
11 Advanced Registered Nurse Practitioner – Certified (ARNP-C) and not by a nurse as Defendant's
12 lawyer argues. The implication that Defendant was examined by an unqualified or incompetent
13 medical practitioner is thus completely unsupported. The examination was extensive, and the
14 ARNP-C ordered an optometry consult, obtaining Defendant's old sleep studies to confirm
15 whether he has sleep apnea and issuance of a CPAP machine is indicated; obtaining X-rays and
16 an EKG and monitoring of Defendant's blood pressure.

17 Thus, the medical records Defendant and the United States submitted do not show there
18 is a compelling reason to grant temporary release to be seen by a doctor in the community. The
19 record does not establish there is a medical emergency that requires release, or that the FDC will
20 not or cannot provide adequate medical care at this juncture.

21 Although Defendant argues the Court should not consider medical records the
22 government submitted, the Court cannot agree with that line of thought. Defendant claims he
23 should be released for medical reasons and placed his medical condition and treatment at issue.

1 He, in fact, submitted medical records from the FDC in support of his motion for release, and
2 thus waived any privilege he might have regarding his medical records. *See Maynard v. City of*
3 *San Jose*, 37 F.3d 1396, 1402 (9th Cir. 1994) (citations omitted); *cf. Morgan v. Doran*, 308 F.
4 App'x 231, 231–32 (9th Cir. 2009) (holding that “medical records could be considered as non-
5 hearsay under Federal Rule of Evidence 803(6)”; *Rose v. Strubeck*, No. CV-04-52-M-LBE,
6 2006 WL 8442770, at *2 (D. Mont. May 24, 2006), *aff'd sub nom. Rose v. Scott*, 357 F. App'x 77
7 (9th Cir. 2009) (holding that HIPPA does not preclude disclosure of the plaintiff's medical
8 information and even if a privilege existed, the plaintiff waived it by placing his emotional
9 condition at issue (citations omitted)).

10 Defendant cannot allege he is receiving inadequate medical care at the FDC and should
11 therefore be temporarily released and then preclude presentation or discussion of his medical
12 records. Moreover, the Court has granted both Defendant's and the United States' motion that the
13 medical records submitted be filed under seal so the public will not have access to them.

14 The Court accordingly DENIES the motion for temporary release. Dkt. 108.

15 DATED this 14th day of May 2021

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BRIAN A. TSUCHIDA
United States Magistrate Judge